



This document is scheduled to be published in the Federal Register on 11/07/2011 and available online at <http://federalregister.gov/a/2011-28687>.

BILLING CODE 4810-70-P

## DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, U.S. Department of the Treasury

ACTION: Request for Public Comment

SUMMARY: This notice invites comments from the public regarding the New Markets Tax Credit (NMTC) Program, which is jointly administered by the Community Development Financial Institutions Fund (CDFI Fund) and the Internal Revenue Service (IRS). All materials submitted will be available for public inspection and copying.

DATES: All comments and submissions must be received by **[insert date 90 days after publication date in the FEDERAL REGISTER]**.

ADDRESSES: Comments may be sent by mail to: Bob Ibanez, Manager, New Markets Tax Credit Program, CDFI Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005; by email to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov); or by facsimile at (202) 622-7754. Please note this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Information regarding the CDFI Fund may be found on the CDFI Fund's Web site at <http://www.cdfifund.gov>.

SUPPLEMENTARY INFORMATION: The New Markets Tax Credit Program was authorized by the Community Renewal Tax Relief Act of 2000 (Pub. L. No. 106-554). It has been extended and amended since initial authorization. The CDFI Fund periodically seeks the views of the public on the NMTC Program, seeking to increase its effectiveness, while reducing cost and

burden on program participants. Currently the CDFI Fund is conducting through a third-party a long term, longitudinal study of the NMTC Program, including an evaluation of investor behavior. This study will be completed in 2012. Once this study is complete, the CDFI Fund may seek comments from the public about whether additional modifications to the program should be made based upon study findings.

In response to this Request for Public Comment, the CDFI Fund invites and encourages all comments and suggestions germane to the mission, purpose and implementation of the NMTC Program. The CDFI Fund is particularly interested in comments in the following areas:

1. Low-Income Communities and Areas of Higher Distress

The NMTC Program targets Low-Income Communities (LICs), including Targeted Populations, as defined in 12 U.S.C. 4702(20). To encourage investment in areas experiencing greater economic distress, the CDFI Fund also provides an opportunity for applicants to score more highly by committing to making investments in Areas of Higher Distress. The CDFI Fund welcomes comments on the definition of “Low Income Community” and designation as an Area of Higher Distress. Specifically:

LICs are generally defined by statute as census tracts with a poverty rate of at least 20 percent or a median family income at or below 80 percent of the area median income. The CDFI Fund has relied upon decennial census data in determining whether census tracts meet these qualifications, and deems as eligible those census tracts which meet the statutory criteria, provided that the decennial census data shows that the “population for which poverty is determined” is greater than zero.

(a) Should the CDFI Fund consider using different standards or methodologies for determining whether census tracts meet the statutory definition of low-income communities? For example,

could using different census data or a different methodology appropriately include census tracts that are currently excluded? Conversely, could using different census data or a different methodology appropriately exclude census tracts that are currently eligible (e.g., census tracts with low populations)? Please cite specific examples of census tract types (not individual census tracts) and sources of national census tract-level data the CDFI Fund could use to both map eligibility and monitor compliance.

(b) In the allocation award process, should the CDFI Fund increase the commitment percentage from 75 percent of investments made in Areas of Higher Distress in order to receive the highest scores for this sub-section of the Community Impact score (See question 25(a) of the 2011 application)? Should the CDFI Fund include additional distress indicators, alter or eliminate any existing indicators?

## 2. Treatment of Certain Businesses

The NMTC Program statute (at Internal Revenue Code § 45D(d)(2)) provides the definition of a Qualified Low-Income Community Business (QALICB), including certain types of businesses that cannot qualify based upon the nature of their operations (i.e., any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises).

(a) Are there certain other types of businesses that should be discouraged or barred from receiving NMTC investments? If so, what types of businesses, and what administrative means could be utilized to discourage such investments?

- (b) Should the CDFI Fund provide additional opportunities in the allocation award process for applicants to score more highly by committing to invest in certain business types over others (e.g., small business or rural investment, operating businesses vs. real estate projects, etc.)?
- (c) Are there specific administrative or regulatory changes that would facilitate the financing of specific types of businesses while preserving public policy objectives and safeguards?

### 3. Community Accountability

The authorizing statute (Title I, subtitle C, Section 121 of the Community Renewal Tax Relief Act of 2000 (P.L. 106-554), as amended) and the CDFI Fund require certain community accountability and primary mission standards be met in order for an entity to qualify as a Community Development Entity (CDE). Moreover, the CDFI Fund evaluates CDE Applicants on certain community accountability dimensions. The CDFI Fund welcomes comments on the community accountability of CDEs. Specifically:

- (a) Should the CDFI Fund increase the community accountability standards for an entity to qualify as a CDE? For example, (1) increase the minimum percentage of Low-Income Community Representatives required on the board (governing or advisory) that is providing accountability for the CDE; or (2) require some minimum of Low-Income Community Representatives to be locally based, such as local residents and/or government officials?
- (b) Should CDE community accountability standards differ for CDEs depending on whether they use governing or advisory boards to demonstrate accountability?
- (c) Should the CDE be required to have Low-Income Community Representatives approve of investments made by the CDE?
- (d) Should CDE activities be required to be coordinated with community stakeholders? If so, how should this coordination be conducted and demonstrated?

(e) Should the CDFI Fund implement measures to increase the transparency of CDE activities?

For example, should it (i) require CDE board meetings to be open to the public and require advance public notice of such meetings; (ii) require CDEs to keep and publish minutes of board meetings; or (iii) require CDEs to make board member contact information readily available to the public?

(f) If a CDE has a Controlling Entity, should the CDFI Fund require that the Controlling Entity of the CDE also meets community accountability requirements? If so, what requirements should be applied?

(g) Should CDE community accountability requirements differ for allocatee CDEs and non-allocatee CDEs?

(h) Are there other ways in which CDEs can enhance their accountability to the Low-Income Communities in their respective service areas?

#### 4. Transaction Costs

The CDFI Fund requests comments on whether additional rules, restrictions, and requirements should be imposed related to fees and expenses charged by CDEs. Specifically:

(a) Should there be greater disclosure of (and perhaps limitations on) the fees and other sources of compensation and profits that NMTC applicants propose and NMTC allocatees and their affiliates charge to (or receive from) their borrowers, investors or other parties involved in NMTC transactions? Should such information be made available by applicants and allocatees directly or through the CDFI Fund to the public or should it remain excluded from disclosure as proprietary business information?

(b) Should the CDFI Fund provide an opportunity for CDEs that commit to limit fee and other forms of compensation to earn a higher score in the allocation award process? If so, please provide specific standards that could be used.

(c) Are there specific administrative or regulatory changes that would reduce transaction costs while preserving public policy objectives and safeguards?

#### 5. Evaluation of Financial Products

The CDFI Fund provides an opportunity in the allocation award process for applicants to earn a higher score in the Business Strategy section by committing to providing equity, equity-equivalent financing, debt with below-market interest rates, or debt with certain flexible terms (question 15 of the 2011 application). The CDFI Fund welcomes comments on the CDFI Fund's evaluation of the quality of an applicant's financial products. Specifically:

(a) Should the CDFI Fund adopt the use of a defined Effective Annual Percentage Rate for purposes of the application and compliance measurement? Should the CDFI Fund alter the flexible rates and terms question (question 15 of the 2011 application) to base the scoring preference on a basis point reduction from a market benchmark determined by the CDE (or a standard metric such as LIBOR) instead of a percentage? Should the benchmarks be raised?

(b) Are there specific administrative or regulatory changes that would facilitate the provision of specific financial products while preserving public policy objectives and safeguards?

#### 6. Use of other federally subsidized financing in conjunction with NMTCs

Often, CDEs and NMTC investors use other sources of federally subsidized financing (e.g., historic tax credits, Section 108 loan guarantees) to help finance NMTC transactions. These sources of financing are sometimes used in addition to the Qualified Equity Investment (QEI), as part of a leveraged debt transaction, or as simultaneous investments made at the project-level.

Currently, the only restriction against commingling of federal funds is that NMTCs may not be used in conjunction with Low Income Housing Tax Credits.

(a) Should there be any additional restrictions in the allocation award process regarding the use of NMTCs with other sources of federally-subsidized financing? If so, are there certain types of federal financing that should be disallowed? Should it matter whether the financing is made as part of the QEI investment (e.g., through the leveraged debt structure) or at the project level?

(b) Assuming that it is appropriate for any other source of federally-subsidized financing to be used in conjunction with NMTC investments, would it be prudent for the CDFI Fund to limit, as part of the allocation process, the overall amount of QEI dollars or project level investments that may be supported with other sources of federal financing?

(c) Are there specific administrative or regulatory changes that could facilitate the coordination of other federally subsidized financing in conjunction with NMTCs while preserving public policy objectives and safeguards?

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D-1

Dated: November 1, 2011

Donna J. Gambrell, Director

Community Development Financial Institutions Fund

[FR Doc. 2011-28687 Filed 11/04/2011 at 8:45 am; Publication Date: 11/07/2011]